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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1953.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,
Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,
Respondent.

BRIEF

Of Respondent, Anheuser-Busch, Inc., in Opposition to Issuance of Writ of Certiorari.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1953.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,
Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,
Respondent.

BRIEF

Of Respondent, Anheuser-Busch, Inc., in Opposition to Issuance of Writ of Certiorari.

OPINION OF THE SUPREME COURT OF MISSOURI.

The opinion of the Supreme Court of Missouri is reported as **Anheuser-Busch, Inc., v. Lloyd Weber et al.**, 265 S. W. (2d) 325 (not yet officially reported). It also appears on pages 104 to 119 of the record. The opinion is dated February 8, 1954.

The motion for a rehearing was overruled on March 8, 1954, and the per curiam opinion of the Supreme Court of Missouri bearing that date (not yet officially reported) is reported in 265 S. W. (2d) 334, immediately following the opinion of February 8, 1954. The per curiam opinion also appears on pages 124 to 126 of the record.

JURISDICTION OF THIS COURT.

In filing their petition for a writ of certiorari, petitioners have invoked the jurisdiction of this Court under Title 28, U. S. C. A., Section 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929).

STATUTES OF THE STATE OF MISSOURI INVOLVED.

The case involves the action of the Circuit Court of Missouri in enjoining the violation of Missouri statutes which prohibit restraints of trade and prescribe both criminal and civil penalties for violations.

The Missouri anti-trade restraint statutes are contained in Chapter 416 of the official compilation, entitled "Monopolies, Discriminations and Conspiracies" (2 Revised Statutes of Missouri, Sec. 416.010 et seq., pp. 3318-3320; 21 V. A. M. S., Sec. 416.010 et seq., pp. 849, 869-872, 877). The pertinent provisions of these statutes are set out in Appendix A of this brief.

THE QUESTION PRESENTED.

The question presented is whether conduct which violates State law, both common law and statutory law, including a State criminal statute, applicable alike to all citizens of the State, is removed from the control of the State and is therefore ungoverned because some of the parties involved in the unlawful conduct are members of a labor organization and claim immunity under the Labor Management Relations Act, 1947 (c. 120, 61 Stat. 136 et seq.).

STATEMENT OF THE CASE.

This action arose in the City of St. Louis, Missouri, in the early spring of 1952 (R. 1).

Respondent is the operator of the largest brewery in the St. Louis, Missouri, area (R. 104).

Petitioners, members of a labor organization commonly called the "Machinists" are the bargaining representatives of some 220 employees of respondent who are regularly engaged in repair and maintenance work on machinery which has already been installed by independent contractors at respondent's brewery (R. 24, 106). Petitioners have been certified by the National Labor Relations Board as bargaining representatives for these employees of respondent (R. 25).

At the time this action arose, no labor dispute existed between petitioners and respondent (R. 97, 109), and this fact was clearly stated in the record by respondent's counsel at the outset of the presentation of evidence in the Circuit Court of St. Louis, Missouri (R. 19).

At the time this action arose, petitioners had formed a combination of labor and industry for the purpose of withholding business relationships from any independent construction contractor in the St. Louis, Missouri, area who would not agree to break his existing collective bargaining agreement with his millwright employees covering the moving, erecting and installing of machinery in new construction and reconstruction of buildings, and to hire Machinists for this purpose (R. 32, 24, 108, 109). Such a combination of labor and industry violates the Missouri common law of restraint of trade and the Missouri anti-trade restraint statute, which is declarative of this common law, and subjects the individual members of the com-

bination to civil liability for damages and to punishment under the Missouri criminal law (R. 109, 111). Such an unlawful combination is designated a "conspiracy" under Missouri law and is frequently so referred to by its Courts.

The Supreme Court of Missouri in the instant case held this combination to be a violation of the Missouri civil and criminal law aforesaid (R. 111).

Petitioners wanted respondent to join the conspiracy, believing that then the other breweries in the area would follow (R. 41); however, respondent refused, upon advice of legal counsel, to violate the Missouri law (R. 34, 40, 107).

In the Spring of 1952 petitioners and respondent were in the process of negotiating a new collective bargaining agreement covering the Machinist employees of respondent (R. 31).

Meeting of the minds was had on every element of the new bargaining agreement which pertained to the work performed in respondent's brewery (R. 34, 40, 108). However, petitioners selected this occasion to force respondent to join their unlawful conspiracy of labor and industry (R. 40). They demanded the insertion of a certain Section 2 of Article VII in the proposed agreement, under the general heading of "Jurisdiction," and stated that this section obligated respondent to carry out the unlawful purpose of the conspiracy (R. 32, 108).

Petitioners stated that unless respondent agreed to join this conspiracy of labor and industry petitioners would assert a specious continuing disagreement over points of the collective bargaining agreement which, in truth, had already been settled (R. 34, 110). Then, they stated, petitioners would call a strike of Machinists at respondent's

plant (R. 33), and by the establishment of picket lines would prevent the commercial operation of respondent's brewery (R. 34).

Under Missouri law, if respondent joined the conspiracy of labor and industry, although it remained entirely passive in its membership, respondent became subject to criminal prosecution along with all other members for acts done by any member in furtherance of the objects of the unlawful conspiracy (R. 109).

The Supreme Court of Missouri in the instant case declared that the undertaking by the petitioners to coerce respondent to join the unlawful conspiracy against the Millwrights and the construction contractors was a violation of the Missouri civil and criminal law aforesaid (R. 111, 112).

When respondent explained to petitioners that it would not join the unlawful combination, on advice of counsel that it was unlawful, petitioners repeated their threats and, this failing, called a strike (R. 34). Picket lines were established (R. 24). Respondent could not get supplies or make shipments, and its food in process was in danger of spoiling (R. 33, 109, 110).

Petitioners repeated that they had no dispute with respondent except over respondent's refusal to join the unlawful conspiracy of industry and labor (R. 34, 40). It had to be that, said petitioners, or else respondent's plant would continue to be immobilized (R. 40).

No issue of any sort, whether "labor" or "commercial," was then involved between petitioners and respondent other than participation of respondent in the unlawful conspiracy against the Millwrights and the independent construction contractors (R. 112). No work was then being performed on respondent's premises by anyone

which was of the type that would be affected by the unlawful conspiracy (R. 36). Respondent had no facilities for doing this type of work and, with one exception provoked by petitioners, never had attempted to do so with its own employees. When the necessity for the doing of such work arose, respondent invariably contracted it out to independent construction contractors who used their own employees to do the work (R. 36, 106).

Upon respondent's complaint the Circuit Court of St. Louis, Missouri, issued a temporary restraining order against the picketing. Thereafter the trial Chancellor heard the evidence and found the above facts, and entered a permanent injunction against the picketing which the Chancellor found was for the sole purpose of compelling respondent to participate in said unlawful combination (R. 83, 80).

The facts thus found by the Chancellor and the terms of the injunction were affirmed by the Supreme Court of Missouri (R. 105, 110).

SUMMARY OF ARGUMENT.

I.

Petitioners, in their statements to representatives of respondent during the collective bargaining negotiations beginning in December, 1951, set forth clearly and candidly all the facts required to invoke the jurisdiction of the Courts of Missouri. These facts included a description of the combination of labor and industry against construction contractors and their employees, who were totally unconnected with respondent; the insistence that respondent join the combination; the specious labor dispute over nonexistent contract differences which would be asserted by petitioners and continued until respondent joined the combination; and the strike action and picketing which petitioners intended to undertake, allegedly as part of the specious labor dispute but actually to coerce respondent to join the combination.

The trial Court and the Supreme Court of Missouri found that these statements by petitioners, and other stipulated facts, established the existence of a combination of labor and industry which was illegal as a conspiracy under the Missouri anti-trade restraint law, and that the statements of petitioners also established that their coercion of respondent was for the sole purpose of forcing respondent to join the conspiracy. These findings were supported by substantial evidence. The combination of labor and industry, of which petitioners were members, violated the civil and criminal laws of the State, and the issuance of the injunction by the State Court against picketing followed as the necessary consequence of the violations of Missouri law.

Petitioners, as part of the unlawful conspiracy of labor and industry (a felony under the laws of Missouri), were

seeking to coerce respondent to join the conspiracy and thereby to commit a felony under Missouri law by the mere fact of having joined. Under the general law of Missouri respondent was entitled to protection, in the form of an injunction against coercion by petitioners. The fact that the particular coercion was picketing did not alter respondent's right or the power of the Court, because the picketing was for an unlawful purpose, as part of the conspiracy.

II.

The Supreme Court of Missouri had carefully detailed the right of freedom from coercion to commit a felony in the very similar case of **Empire Storage & Ice Co. v. Giboney** (1948), 357 Mo. 671, 210 S. W. (2d) 55, and had sustained an injunction against coercion by picketing in that case. Its decision was upheld by a unanimous decision of this Court in 1949 under the style **Giboney v. Empire Storage and Ice Co.** (1949), 336 U. S. 490, 69 S. Ct. 684, 93 L. Ed. 834. These decisions make it clear that while concerted action of labor organizations to achieve legitimate objectives may not be interfered with, labor activities may not be perverted to achieve an unlawful end. The Supreme Court of Missouri properly upheld the injunction in the case at bar on the authority of the **Giboney** decision.

III.

Petitioners here contend that the Labor Management Relations Act, 1947, has altered the power of the State of Missouri to enforce its general laws against restraint of trade, and to protect respondent from coercion to force respondent to commit a felony. Such a contention is without merit. The general public policy of freedom of labor activities reached its zenith in the Wagner Act, or National Labor Relations Act of 1935. Nothing in the public

policy expressed there or in the Norris-LaGuardia Act prevented the issuance of the injunction in the Giboney case and properly so, because the public policy against restraint of trade does not permit combinations of labor and industry, and will not permit such an unlawful combination to conduct its operations under the guise of an asserted labor activity.

The public policy against restraint of trade continues unchanged. In addition, as clearly stated by this Court, the Labor Management Relations Act, 1947, has increased, rather than decreased, the responsibility of labor organizations. Therefore the passage of the Labor Management Relations Act, 1947, did not indicate a change in the public policy that combinations of labor and industry in restraint of trade are unlawful.

None of the activities of petitioners against respondent are within the scope of the unfair labor practices of a labor organization as set out in Section 8 (b) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, but in any event nothing in Federal law could protect respondent from civil and criminal liability under the Missouri law if respondent was compelled to join the illegal conspiracy. The Missouri anti-trade restraint law and its penal provisions exist and are operative in a field entirely removed from labor law, and its policies are consistent with all Federal law. The operation of Missouri law should not be altered by the fact that one of the violators of the Missouri anti-trade restraint law is a labor organization.

ARGUMENT.

I.

Petitioners' Statements to Respondent Before and After the Picket Line Was Established Confessed the Unlawful Conspiracy Found by the Courts of Missouri and Supported Issuance of the Injunction.

The instant case as between petitioners and respondent involves neither a "labor dispute" nor an "unfair labor practice."

At the outset of the hearing of the evidence before the trial Chancellor in the Circuit Court of Missouri, the position of respondent was stated by its counsel as follows (R. 19):

> *"The plaintiff does not wish to be understood as in any way contending in this case that this Court has before it for consideration, decision or resolution, by this Court, a labor dispute.*
>
> "There is reference in the petition to a labor dispute and to a jurisdictional dispute between two labor unions. Those matters were, we believe, necessarily referred to in the petition, and we believe that they will necessarily also be referred to in the evidence.
>
> "The plaintiff, however, does not request any action by this Court with respect to, or with respect to resolving those labor controversies." (Italics ours.)

A. Petitioners Acknowledged to Respondent the True Purpose of Their Activities and the Means They Would Utilize Therein. Petitioners Also Acknowledged to Respondent That They Would Simulate a Labor Dispute to Mask the True Purpose of Their Activities.

Before the action was initiated in the Circuit Court, and while petitioners entertained false hopes that respondent

would join their unlawful conspiracy of labor and industry against the independent construction contractors and their Millwright employees, petitioners stated quite frankly to respondent their purposes in this conspiracy. When respondent refused upon advice of counsel to violate the Missouri law and explained why, petitioners candidly acknowledged that they had no disagreement with respondent over their collective bargaining agreement, and were equally candid in announcing their intention to contend speciously that such a disagreement existed. They stated their intention to use that false dispute as the excuse for strike action, and the strike, in turn, as the excuse for preventing the operation of respondent's plant by picketing. They stated that this course of conduct was for the sole and express purpose of coercing respondent to join the conspiracy of labor and industry against the construction contractors and their Millwright employees (R. 33, 34).

The facts clearly demonstrate that the petitioners perverted the traditional **forms** of a labor dispute in the course of their unlawful conspiracy. This accomplished, the petitioners contended that they had, and have, a peculiar immunity from the operation of the Missouri laws which their conduct violated.

Initially, after respondent filed the complaint in the Circuit Court of the City of St. Louis, the petitioners sought its removal to the United States District Court for the Eastern Division of the Eastern District of Missouri, on the ground that the case involved a labor dispute over which the Federal tribunals have exclusive jurisdiction. In his memorandum opinion remanding the case to the State court, Judge Hulen stated that the effect of the complaint was:

> "to set up a common law cause of action, by pleading a number of unlawful acts by the defendants' union as evidence of an unlawful conspiracy. *We do not*

read the petition as stating a cause of action in the nature of a labor dispute as such. Whether the petition states a good cause of action, we think, is a question for the State court and not this Court." (Italics ours.)

B. The Trial Court and the Supreme Court of Missouri Found That the True Purpose of Petitioners' Activities Was to Violate the Anti-trade Restraint Laws of Missouri and That the Labor Dispute Feigned by Petitioners Did Not Exist.

The trial Chancellor, having heard the evidence and having observed the demeanor of the witnesses, found that no bona fide labor dispute existed between petitioners and respondent on April 7, 1952 (the date the picket lines were established) (R. 97).

The Supreme Court of Missouri, reviewing all the evidence, found:

> "* * * that no bona fide labor dispute existed between plaintiff (respondent herein) and the Machinists Union on April 7, 1952; that prior to that date defendants and the Union, both in and out of said bargaining negotiations, continued to raise specious and feigned points and issues respecting matters as to which defendants were actually in accord with plaintiff, in order to give the false impression to the public that a labor dispute existed" (265 S. W. [2d] 325, l. c. 328, 329; R. 109, parenthetical material supplied).

Having affirmed the findings of the trial chancellor, the Supreme Court of Missouri stated:

> "We think it clearly appears and we rule from the above noted substantial evidence that: (a) the above conduct of defendants and the Union, as directed against the independent construction contractors and their Millwright employees, constituted and was a conspiracy in violation of the common and

statutory law of this State; (b) that the sole and unlawful purpose of the concerted action of defendants and the Union in picketing plaintiff's plant was to effectuate the Union's unlawful conspiracy and to compel and coerce plaintiff to join said conspiracy to violate the law by acquiescing in the Union's unlawful demands; (c) that the picketing of plaintiff's plant was effected by an agreement and combination of the members of the Union in restraint of trade and that such picketing was and constituted a local transportation combination which denied and unlawfully prevented the transportation of products and commodidities to or from plaintiff's plant, and the processing and manufacturing of products and commodities therein.

"It seems clear to us that in picketing plaintiff's plant on April 7, 1952, and thereafter, defendants did so, not as the result of nor as any step in a labor dispute with plaintiff. In that picketing defendants took their final steps in their effort to coerce and compel plaintiff to become an active participant in defendants' conspiracy against the independent contractors and their Millwright Union employees. The instant picketing by the Union was for an illegal purpose" (265 S. W. [2d] 325, l. c. 330; R. 111, 112).

C. The Missouri Courts Acted on Petitioners' Coercive Conduct Which Violated Missouri Law, to Protect Respondent From Being Compelled to Commit Acts Declared to Be Felonies Under Missouri Law.

It is clear from the opinion of the Supreme Court of Missouri in the instant case that the State courts were not seeking to impose Missouri labor law on anyone. Missouri has no code of laws directed exclusively at labor relations. Nor were they seeking to invade a portion of the field of labor law preempted by Federal regulation.

In the instant case the courts of Missouri were acting with reference to proven facts, in the same manner that they have acted in numerous other instances of violations of the Missouri anti-trade restraint law. The combination of labor and industry directed against the construction contractors and their Millwright employees was found to be an illegal conspiracy under the Missouri law (R. 111).

If respondent had agreed to join this conspiracy when first approached by petitioners, or if respondent had acquiesced after hearing the blunt predictions by petitioners of the future harms that would befall respondent unless it joined the conspiracy, all coercive pressure by petitioners against respondent would have ceased at once, and respondent would have been free to operate its brewery with petitioners' blessings.

However, if respondent had so become a party to the unlawful conspiracy, respondent immediately, without taking any further action itself, would have subjected itself to the following liabilties under the laws of Missouri:

(1) Criminal liability of its individual officers as felons under Section 416.050 of the Revised Statutes of Missouri for fine and/or imprisonment.

(2) Criminal liability of the corporation under Section 416.070 of the Revised Statutes of Missouri for:

(a) Forfeiture of its corporate charter, and

(b) Forfeiture of its properties in Missouri, or

(c) Payment of a fine to the State of Missouri.

(3) Civil liability for triple damages to any person injured by any acts of the combination under Section 416.090 of the Revised Statutes of Missouri.

In addition to the civil and criminal liabilities above set out under the **Missouri** restraint of trade laws, it is sub-

mitted that if respondent had joined this unlawful combination of labor and business organizations respondent would likewise have been subject to possible prosecution under the anti-trust laws of the **United States** (Sherman Act, 26 Stat. 209, C. 647, 15 U. S. C. A., Sec. 1 et seq.) which imposes both civil and criminal penalties (**Allen Bradley Co. v. Local Union No. 3, I. B. E. W.** [1944], 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939). Thus Federal law afforded no protection or relief for respondent if it joined said combination. Rather, the Federal law imposed additional penalties.

When respondent refused to join the conspiracy, petitioners applied coercion. The illegal conspiracy having been established to the satisfaction of the trial court, respondent was entitled to immediate relief from such coercion, including relief from the particular form of coercion then being applied: i. e., the picketing of respondent's brewery.

II.

Application of the Anti-Trade Restraint Laws of Missouri to a Labor Organization Under Similar Circumstances Was Upheld by This Court in Giboney v. Empire Storage and Ice Co.

The anti-trade restraint laws of Missouri were early upheld by this Court (e. g., **International Harvester Co. v. Missouri** [1913], 234 U. S. 199, 34 S. Ct. 859, 58 L. Ed. 1276). By their terms these laws apply without exception to **all** persons who combine to restrain freedom of trade.

In the case of **Giboney et al. v. Empire Storage and Ice Co.** (1949), 336 U. S. 490, 69 S. Ct. 684, 93 L. Ed. 834, this Court upheld the application of the Missouri anti-trade restraint laws to a labor union in circumstances similar to those here presented. The Supreme Court of Missouri upheld the injunction in the instant case in view of the

obvious similarity of the essential facts to those of the **Giboney** case.

The **Giboney** case involved an attempt by an ice handlers' Union to unionize certain individual ice peddlers who operated their own trucks in carrying on their own business of selling ice at retail. As part of the campaign the Union obtained agreements from all the manufacturers and distributors of ice in Kansas City except Empire not to sell ice to non-union peddlers. Empire refused to sign such an agreement or otherwise accede to the Union's demand that it cease selling ice to non-union peddlers, and the Union placed a picket line at Empire's plant with the resultant halting of substantially all deliveries to and from the plant by union truck drivers, stopping 85% of Empire's storage business. Empire brought suit to enjoin the picketing on the ground that it was pursuant to an unlawful combination in restraint of trade to prevent Empire from carrying on its business, including the sale of ice, and therefore the picketing was unlawful.

In upholding the injunction in the **Giboney** case, the Supreme Court of Missouri found that an unlawful combination existed between the Union and the other ice manufacturers for the purpose of refusing to sell to non-union ice peddlers, and that the Union was producing injury and damage to Empire, through a boycott of Empire's business, for the purpose of forcing Empire to join the unlawful combination or conspiracy. The combination violated the Missouri anti-trade statute, and the Supreme Court of Missouri held that since the defendant Union was using its picket line in the attempt to force Empire into this unlawful combination against the ice peddlers, the purpose of the picketing was unlawful and the picketing for the unlawful purpose would be enjoined (**Empire Storage & Ice Co. v. Giboney** [1948], 357 Mo. 671, 210 S. W. [2d] 55).

In affirming the judgment of the Supreme Court of Missouri, this Court said (336 U. S., l. c. 498, 93 L. Ed., l. c. 841):

> "* * * Thus all of appellants' activities—their powerful transportation combination, their patrolling, their formation of a picket line warning union men not to cross at peril of their union membership, their publicizing—constituted a single and integrated course of conduct, which was in violation of Missouri's valid law. In this situation, the injunction did no more than enjoin an offense against Missouri law, a felony."

This Court also said (336 U. S., l. c. 497, 93 L. Ed., l. c. 841):

> "* * * To exalt all labor union conduct in restraint of trade above all state control would greatly reduce the traditional powers of states over their domestic economy and might conceivably make it impossible for them to enforce their antitrade restraint laws. See Allen Bradley Co. v. Local Union No. 3, I. B. E. W., 325 U. S. 797, 810, 89 L. ed. 1939, 1948, 65 S. Ct. 1533. More than that, if for the reasons here contended states cannot subject union members to such antitrade restraint laws as Missouri's, neither can Congress. The Constitution has not so greatly impaired the states' or nation's power to govern."

The fact situation in the instant case is strikingly similar to that in **Giboney v. Empire Storage and Ice Co.** In each instance the defendant Union sought to extend its bargaining representation to a group which was independent of plaintiff, and for which said Union had not been certified as bargaining agent. In each instance, in furtherance of its attempts at organization, the Union demanded that plaintiff enter into an agreement with the Union to refuse to do business with the independent con-

tractors who had not recognized the Union. In the **Giboney** case the Union obtained these agreements from all other persons in plaintiff's line of business in the area involved; in this instance the Union obtained the agreement from one local brewer, and announced its intention of getting similar agreements from the remaining breweries and presumably from all other plants in the area over which it could exercise control. In both the **Giboney** case and the instant case the plaintiff refused to become a party to what under the Missouri common law and the Missouri anti-trade restraint statute is an illegal conspiracy, and in each instance the plant of plaintiff was picketed by the Union in an effort to compel plaintiff to join the conspiracy. In each case the trial Court granted a permanent injunction which was affirmed by the Supreme Court of Missouri.

In the instant case petitioners announced their unlawful purpose to compel respondent to join the conspiracy between labor and industry, and the means chosen to achieve the unlawful purpose, **before** the picketing of respondent's brewery began. At the time this announcement was made to respondent the State of Missouri had, subject to its jurisdiction, all the elements of a present existing violation of its civil and criminal laws (R. 111, 112). Picketing, the first act of the conspiracy which could be denominated a labor activity that in any way involved the employer-employee relationship between petitioners and respondent, had not yet occurred.

It is unreasonable to contend, as do petitioners, that although the jurisdiction of the State of Missouri was complete by reason of the existence of the conspiracy in violation of its civil and criminal laws, the persons guilty of the conspiracy could obtain absolute immunity from State law by going one step further along their course of misconduct.

We recognize the unquestioned rights of labor to strike and to picket when these activities are in furtherance of a **lawful** labor purpose. But labor has no immunity when it uses traditional labor forms to attain an unlawful purpose. When such a false immunity is asserted, the State of Missouri is entitled and obligated to enforce its general laws against a completed unlawful conspiracy, and to disregard the pretenses sought to be used as a shield.

That, we submit, is the doctrine of law announced by this Court in **Giboney v. Empire Storage and Ice Co.**, and it is a doctrine which is unchanged at the present time. For the reasons stated in that opinion, the decision of the Supreme Court of Missouri in the case at bar is correct.

Petitioners here seek to create an aura of labor disputation of their own fabrication around a conspiracy in violation of general Missouri law. They can, and do, point to the long standing jurisdictional dispute between Machinists and Millwrights over the moving, erecting and installing of machinery in new construction and in reconstruction of buildings. But respondent is not a party to that dispute, and the Courts of Missouri were not asked to take any action with reference to that dispute. Respondent has never, with one exception which was induced by prior actions of petitioners, done any of the work which is the subject of that jurisdictional dispute with **any** employees of respondent, either Machinist or Millwright. Respondent has no control or right of control over the employees, or the union affiliation of the employees, of the independent construction contractors whom respondent traditionally has hired to make such machinery installations (R. 106).

Therefore the attempt by coercion to force respondent to fight petitioners' battle against the independent construction contractors must fail, as it did in the **Giboney** case, and for the identical reasons.

III.

The Doctrine of the Giboney Case Permits Enforcement of the General Anti-Trade Restraint Laws of Missouri Notwithstanding the Provisions of the L. M. R. A., 1947.

A. Enforcement of the Missouri Law Was Not Impeded by the Wagner Act (N. L. R. A., 1935).

However, petitioners here contend that the **Giboney** case does not apply. They point out that the **Giboney** case, although decided in 1949, involved facts occurring prior to the effective date of the Taft-Hartley Act (Labor Management Relations Act, 1947, c. 120, 61 Stat. 136, 29 U. S. C. A., Secs. 141-187).

Thus basing their distinction on the intervention of a single Act of Congress, petitioners state that the facts of the instant case "relate to matters either protected or proscribed by the N. L. R. A., as amended, and by the L. M. R. A., 1947," and as such may not now be dealt with by a Missouri court in the manner of the **Giboney** decision.

The petitioners' contention is grounded on their erroneous assertion that:

> "In this connection it must be remembered that Congress has taken over **the field of** labor relations in interstate commerce. This means the **entire area** of such relations, not just a segment or part. Unless Congress has specifically exempted a particular part of this field, or has remained silent on the subject, or has ceded it to state control, the states are excluded and so the cases hold" (p. 21 of petition for writ of certiorari).

Contentions such as the foregoing were fully answered by the decision of this Court on June 7, 1954, in the case

of **United Construction Workers v. Laburnum Construction Corporation** (22 U. S. Law Week 4289, 26 Labor Cases [CCH] par. 68,460). In the **Laburnum** case this Court upheld the jurisdiction of the State Courts of Virginia to entertain common law tort actions for the recovery of damages caused by the very same conduct that constituted a union unfair labor practice under Section 8 (b) (1) (A) of the National Labor Relations Act, as amended.

Answering a similar contention by a Union, which apparently had cited the identical cases relied on by petitioners for this point at page 22 of their petition, this Court said (22 L. W., l. c. 4291):

> "In the **Garner** case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. *Here Congress has neither provided nor suggested any substitute for the traditional state court procedure* for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct. We see no substantial reason for reaching such a result. The contrary view is consistent with the language of the Act and there is positive support for it in our decisions and in the legislative history of the Act." (Italics ours.)
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> "To the extent that Congress prescribed preventive procedure against unfair labor practices, that case recognized that the Act excluded conflicting state procedure to the same end. *To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already*

committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated. The care we took in the **Garner** case to demonstrate the existing conflict between state and Federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived. The primarily private nature of claims for damages under state law also distinguishes them in a measure from the public nature of the regulation of future labor relations under federal law." (Italics ours.)

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"Considerable legislative history supports this interpretation. Under the National Labor Relations Act, 1935, there were no prohibitions of unfair labor practices on the part of labor organizations. Yet there is no doubt that if agents of such organizations at that time had damaged property through their tortious conduct, the persons responsible would have been liable to a tort action in state courts for the damage done. See **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740.

"*The 1947 Act has increased, rather than decreased, the legal responsibilities of labor organizations.* Certainly that Act did not expressly relieve labor organizations from liability for unlawful conduct. It sought primarily to empower a federal regulatory body, through administrative procedure, to forestall unfair labor practices by anyone in circumstances affecting interstate commerce. The fact that it prescribed new preventive procedure against unfair labor practices on the part of labor organizations was an additional recognition of congressional disapproval of such practices. Such an express recognition is consistent with an increased insistence upon the

liability of such organizations for tortious conduct and inconsistent with their *immunization* from liability for damages caused by their tortious practices." (Italics ours.)

B. The L. M. R. A., 1947, Has Increased, Rather Than Decreased, the Legal Responsibilities of Labor Organizations.

The language of this Court in the **Laburnum** case effectively disposes of petitioners' contention that the conspiracy which has been directed against respondent in violation of Missouri law is **protected** by the N. L. R. A., as amended, or by the L. M. R. A., 1947. Certainly, as this Court stated, the purpose of the Act of Congress incorporating these provisions was to **increase** the responsibility of labor. Therefore, since the identical conduct was enjoined by the Courts of the State of Missouri in the **Giboney** case before the passage of these laws and the injunction was upheld by this Court, the same consequences should follow from unlawful conduct after enactment of the N. L. R. A., as amended, and the L. M. R. A., 1947.

C. The Enumeration of Labor Unfair Labor Practices in the L. M. R. A., 1947, Does Not Affect the Continued Application of General Missouri Law.

1. The Missouri anti-trade restraint law deals with unlawful consequences of petitioners' conduct which are not encompassed by, or inconsistent with, the L. M. R. A., 1947.

Petitioners' alternative contention before this Court in their effort to avoid the controlling effect of the **Giboney** decision is that their conduct, whether lawful or unlawful, is "proscribed" by the N. L. R. A., as amended, and the L. M. R. A., 1947. This contention of petitioners has reference to provisions of these Acts which prohibit a **strike** under certain conditions, in order to compel assignment of

specific work. The contention, then, is that since a "strike" has been mentioned by Congress as an unfair labor practice when utilized for a particular purpose, and since petitioners did "strike," petitioners thus acquired immunity from all Missouri law, even though they were guilty of an unlawful conspiracy before the strike.

It is a unique theory of law that a person avoids the consequences of one wrong by committing another.

The facts of the instant case prove that this is not a bona fide labor dispute at all, and that such labor activities as appear herein are shams erected by petitioners in an attempt to mask the conspiracy in restraint of trade (R. 110-112). That being so, it is respectively submitted that the deliberate addition of one or more acts designated as Union unfair labor practices in Section 8 (b) of the N. L. R. A., as amended, to an existing conspiracy in restraint of trade will not serve to remove the miscreants from the jurisdiction of the State whose laws they have violated.

The case of **United Construction Workers v. Laburnum Construction Corporation** (supra) involved conduct which is a Union unfair labor practice under Section 8 (b) of the National Labor Relations Act, as amended, the amendment being a part of the Labor Management Relations Act, 1947. This Act gives the National Labor Relations Board exclusive jurisdiction over the labor consequences of conduct constituting an unfair labor practice. This same conduct violated the common law of torts of the State of Virginia.

This Court held in the **Laburnum** case that notwithstanding the provisions of the Labor Management Relations Act, 1947, *the same conduct* which constituted the unfair labor practice was subject to the jurisdiction of the State Court of Virginia for the purpose of applying the State common law for damages resulting from the tortious conduct.

It is submitted that the principle of the **Laburnum** case goes farther than is required to sustain the judgment of the Supreme Court of Missouri in the instant case.

The basis of the decision by the Supreme Court of Missouri in the instant case is that, having found a complete and actionable conspiracy of labor and industry in violation of general Missouri law, which conspiracy was established without the necessity of reference to any "labor" activities, the Courts of Missouri proceeded to enjoin an action which petitioners had taken in furtherance of the conspiracy. In so doing the Courts of Missouri were applying Missouri law which was in no sense "labor" law, to conduct which petitioners now allege was **also** an unfair labor practice under the Labor Management Relations Act, 1947.

The Supreme Court of Missouri held that the conduct in question was **not** an unfair labor practice within the meaning of that Act, basing its finding on the decision of the National Labor Relations Board in **Anheuser-Busch, Inc.**, 101 N. L. R. B. 346, No. 87, which involved the same conduct and the same parties. Respondent submits that this holding of the Supreme Court of Missouri is correct.

However, even if it is admitted, for the sake of argument, that the conduct in question **was** an unfair labor practice, the Courts of Missouri were dealing with this conduct in an entirely different field than does the Labor Management Relations Act, so that the injunction issued by the Circuit Court of Missouri and upheld by the Supreme Court of Missouri does not conflict with the power or the jurisdiction of the National Labor Relations Board.

Under the principle of the **Laburnum** case, the decision of the Supreme Court of Missouri in the case at bar is consonant with all Federal laws.

2. **That conduct of petitioners to which the Courts of Missouri applied the Missouri law is not of the type dealt with by the L. M. R. A., 1947.**

It is submitted, however, that the Supreme Court of Missouri correctly found that the conduct which violated Missouri law did not constitute an unfair labor practice under the National Labor Relations Act as amended.

In the instant case the petitioners, in furtherance of their specious assertions of a "labor dispute," filed unfair labor practice charges against respondent before the N. L. R. B. on March 24, 1952 (before the picketing was begun) on the grounds of refusal to bargain. After petitioners called the strike against respondent April 7, 1952, respondent filed counter-charges with the N. L. R. B. against petitioners on the basis of Section 8 (b) (4) (D) of the N. L. R. A., as amended. These counter-charges filed by respondent before the N. L. R. B. were necessary elements of defense before a tribunal initially selected by petitioners to bolster their asserted position of being engaged in a labor dispute with respondent. The N. L. R. B. conducted a hearing on the same basic facts which were before the Missouri courts, for the preliminary purpose of determining whether the conduct alleged in respondent's countercharge was a type over which the Board could take jurisdiction under the National Labor Relations Act as amended.

The N. L. R. B. held that the type of conduct by labor contemplated under this section of the N. L. R. A. required a present specific demand for assignment of particular work, which work was being done at the very time the specific demand was made. Since no work of the kind sought to be controlled by the unlawful conspiracy was then being done at respondent's brewery, there was, in the opinion of the Board, no "dispute" within the meaning of the N. L. R. A.

It may be noted, also, that after the respondent obtained its injunction in the State Court against the picketing, petitioners amended their charge pending before the N. L. R. B. to claim the obtaining of this injunction as an additional unfair labor practice by respondent. The N. L. R. B. refused to issue a complaint on petitioners' charges of unfair labor practices. (Administrative Decision of General Counsel of N. L. R. B., Case No. 766, August 17, 1953, par 12,776, CCH Labor Law Service, 4th Ed.)

In the spring of 1952 respondent was faced with a situation vital to its existence, which situation required immediate determination. Respondent was being subjected to powerful coercion or pressure by petitioners to force respondent to join an unlawful combination of labor and industry. The conspiracy already was complete and therefore violated the anti-trade restraint laws of Missouri.

The N. L. R. B. could not give and did not give respondent any relief from the coercion. In these circumstances, if respondent sought its own solution by joining the conspiracy, certainly neither the N. L. R. B. nor any Federal labor law could prevent respondent from being liable in civil law actions for triple damages under Section 416.090 of the Missouri statute. Neither the N. L. R. B. nor any Federal labor law could prevent respondent from being prosecuted and convicted in the criminal courts of Missouri under Section 416.070 of the Missouri statute, and punished by forfeiture of its corporate franchise and forfeiture of all or part of its property to the State.

The position of respondent was identical to that of the Empire Storage and Ice Company in the **Giboney** case, as stated by this Court (336 U. S. 490, l. c. 493, 93 L. Ed. 834, l. c. 838, 839). The language of this Court may be paraphrased as follows:

"In this dilemma, Anheuser-Busch was faced with three alternatives: It could continue to have the work of moving, erecting and installing machinery in new and expanded buildings at its brewery done by the independent construction contractors, all of whom employed Millwrights for this purpose, in which event it would be compelled to wage a fight for survival against overwhelming odds; it could refuse to deal with the independent construction contractors unless they complied with the Union's ultimatum that they employ Machinists for this purpose, thereby relieving itself from further conflict with the Union, in which event it would be subject to prosecution for crime and suits for triple damages; it could invoke the protection of the law. The last alternative was adopted."

CONCLUSION.

For the reasons hereinabove stated, we submit that petitioners' petition for the writ should be denied and pray that this be done.

Respectfully submitted,

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APPENDIX A.

Pertinent provisions of Chapter 416 of the Revised Statutes of Missouri referred to in this brief.

Chapter 416: Monopolies, Discriminations and Conspiracies.

Section 416.010, "Combination in restraint of trade declared a conspiracy":

> "Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400" (21 V. A. M. S., Sec. 416.010).

Section 416.050, "Penalties":

> "Any person violating any of the provisions of sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400 or who shall do any act prohibited or declared unlawful by the provisions of said sections, shall be adjudged guilty of a felony, * * *" (21 V. A. M. S., Sec. 416.050).

Section 416.070, "Offending corporations to forfeit charter and property":

> "Any corporation * * * which shall violate any of the provisions of sections 416.010 to 416.100, * * * may * * * be declared by the court to have forfeited its corporate rights and franchises * * *; and such court

> may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the state, or * * * assess against it a fine * * *" (21 V. A. M. S., Sec. 416.070).

Section 416.090, "Persons injured to recover triple damages":

> "Any person injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by sections 416.010 to 416.100 * * * shall recover threefold the damages by him sustained, and the costs of the suit, including a reasonable attorney's fee" (21 V. A. M. S., Sec. 416.090).

The provisions of Chapter 416 were incorporated into Missouri statutory law in the period 1891-1907. They are in no sense "labor legislation" or "labor regulatory statutes."